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## The importance of intellectual property for SMEs; Challenges and moving forward

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### Abstract

Intellectual property (IP) and its value often not adequately appreciated. In the increasingly knowledge-driven economy, IP is a key consideration in day-to-day business decisions. New products, brands and creative designs appear almost daily on the market and are the result of continuous human innovation and creativity. Therefore, this paper will look into the importance of IP for Small Medium Enterprises (SMEs) and product development specifically on agro-based products. This paper further demonstrates how IP can become an economic tool and the challenges faced by SMEs in implementing IP system. In addition, this paper offers useful insights to policy makers and SMEs in utilizing IP by drawing lessons from other countries.

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### 1. Introduction

Intellectual Property (IP) should be seen as a power tool for economic growth instead of an obscure legal concept. The protection of IP rights plays an important role in inducing technological change and facilitating economic growth. The value of IP is often not adequately appreciated and its potential for providing opportunities for future profit is widely underestimated by SMEs. However, when IP is legally protected and there is demand for the IP-protected products and/or services in the marketplace, IP can become a valuable business asset.

IP is a bundle of legally recognized rights when ideas or inventions are protected (Mohd Noo, March 2011). The protection of intellectual property rights (IPRs) is said to be the main motivation for inventors to create new

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inventions. It encourages commercialization, technology transfer and it promotes international trade. IP is an important component in a country's economic development where a continuous creation of intellectual property from time to time will increase the investment and trading activities (Gee, 2007).

Malaysian IP includes Patent, Trade Mark, Copyright, Industrial Design, Geographical Indication and Layout-Designs of Integrated Circuit. Plant Variety is another component of IP which is under the purview of Ministry of Agriculture and Agro-based Industry (MoA). The protection system of IP gives exclusive rights to IP owners to control and exploit their IP. This includes the rights to make, use, distribute, sell and import. They can also commence legal action against the parties infringing their rights.

However, many are unaware of the importance of IP. In a recent survey, it was clearly evident that the percentage of public awareness about IP is very low and only understood by parties with interest or institutions and organizations which are involved in the field (Perbadanan Harta Intelekt Malaysia, 2013). Thus, the objective of this paper is to discuss the significance of IP to entrepreneurs or to be specific SMEs which often to be neglected as business assets. In addition, the paper is highlighting issues and challenges faced in implementing IP among the SMEs. This paper further suggests some recommendations for policy makers and SMEs in fully utilizing IP to the maximum in the business and overcoming the challenges faced.

## **2. IP and SMEs**

### *2.1 Significance of IP for SMEs*

IP and its value often not adequately appreciated. In the increasingly knowledge-driven economy, IP is a key consideration in day-to-day business decisions. New products, brands and creative designs appear almost daily on the market and are the result of continuous human innovation and creativity. Small and medium-sized enterprises (SMEs) are often the driving force behind such innovations (Saleh, 2008). Their innovative and creative capacity, however, is not always fully exploited as many SMEs are not aware of the intellectual property system or the protection it can provide for their inventions, brands, and designs (WIPO Magazine, 2005).

If left unprotected, a good invention or creation may be lost to larger competitors that are in a better position to commercialize the product or service at a more affordable price, leaving the original inventor or creator without any financial benefit or reward. Adequate protection of a company's IP is a crucial step in deterring potential infringement and in turning ideas into business assets with a real market value. Taking full advantage of the IP system enables companies to profit from their innovative capacity and creativity, which encourages and helps fund further innovation. Its potential for providing opportunities for future profit is widely underestimated by the SMEs. IP can become a valuable business asset if it is legally protected and there is a demand for the IP related products or services in the marketplace. IP may generate income for the SME through licensing, sale or commercialization of the IP products or services that may significantly improve SME's market share or raise its profit margin (Idris, 2003).

Furthermore, IP rights may enhance the value or worth of SME in the eyes of investors and financing institutions. Hence, in the event of sale or merger or acquisition, IP assets may significantly raise the value of the enterprise. Traditionally, physical assets have been responsible for the bulk of the value of a business entity and largely responsible for determining the competitiveness of an enterprise in the market. However, these scenarios have changed as a result of the revolution of the information technologies, intangible assets ranging from human capital such as know how to ideas, brands, designs and other intangible assets from the creative and innovative capacity are often today become more valuable than the physical assets (Idris, 2003).

The strategic utilization of IP assets can, therefore, substantially enhance the competitiveness of SMEs. SMEs should make sure that they are ready to face the challenge and take measures to exploit their IP and protect it wherever possible. Like physical assets, IP assets must be acquired and maintained, accounted for, valued,

monitored closely, and managed carefully in order to extract their full value. But before this can be done, SMEs must first acknowledge the value of IP and begin to see it as a valuable business asset.

## *2.2 IP for product development*

IP assets accrue to their owners through its business development and strategies: from product development to design, from service delivery to marketing, and from raising financial resources to exporting or expanding its business through licensing or franchising. IP instills trust, confidence and loyalty to the consumers it markets. Furthermore, IP provides a distinct identity, image and reputation (Urwin, 2008).

For most small and medium-sized enterprises (SMEs), marketing products or services is a major challenge. A marketing strategy should establish a clear link between your products or services and your SME, as the producer or provider of such products or services. That is to say, customers should be able to distinguish, at a glance, between your products or services and those of your competitors and associate them with certain desired qualities.

IP, when efficiently used, is an important tool in creating an image for your business in the minds of your current and potential customers and in positioning your business in the market (Perbadanan Harta Intelek Malaysia, 2013). IP rights, combined with other marketing tools (such as advertisements and other sales promotion activities) are crucial for differentiating your products and services and making them easily recognizable and diversifying your market strategy to various target groups including marketing the products or services in foreign countries.

However, not all IP may be relevant or applicable to agro-based product (Mohd Noo, March 2011). One IP would be very much relevant is trademark. Brand is something that is unique and is able to attract people towards a certain product or service. It is an intangible asset that is more powerful than the real product or service. It is an intangible asset that is more powerful than the real product or service. Today, it is much easier to sell brand instead of selling the real product. Consumer will tend to be influenced by brand instead of product or service.

To register a brand, entrepreneur must have knowledge on trademark. Trademark is a distinctive sign which identifies certain goods or services. Trademarks may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three- dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. A trademark is used as a marketing tool to enable customers in recognising the product of a particular trader (Perbadanan Harta Intelek Malaysia, 2013).

Registration of trademark in Malaysia are governs by Trademark Act 1976, Trademark Regulations Act 1997 and Trademark (Amendment) Act 2011. Trademark has multiple functions. Trademark can be serving as origin function in which it helps to identify the source and those responsible for the products and services sold in market. For example, Selangor Pewter, Tenom Coffee and Genting.

A trademark also enables consumers to choose goods and services with ease while shopping. Furthermore, trademark may also serve quality function as it describes the product for its known quality. Importantly, trademark plays a significant role in advertising and consumers are greatly influenced by advertisement. An established trademark can be a valuable asset to the owner as it can be licensed or franchised such as Kentucky Fried Chicken, McDonald, Starbucks Coffee and Tea etc.

Registered trademark owners will have exclusive right to use their marks in trading. Trademark owner have the rights to take legal action for infringement against others who use their marks without consent. Furthermore, trademark owner may opt to take civil action or lodge complaints to Enforcement Division under the Trade Description Act 1972. Having registered trademark, entrepreneur will have added advantage as the registration certificate would be a conclusive evidence of ownership (Trademark Act 1976).

Another IP which is very much relevant to agro-based product would be geographical indication. Geographical indication provides legal protection to products of natural resources based on their geographical origin. In general, geographical indication is a sign used on goods which have a specific geographical origin and possess particular qualities or a reputation due to that place of origin. It can be used on natural or agricultural product or any product of handicraft or industry (Perbadanan Harta Intelekt Malaysia, 2013).

The protection of geographical indication is governed by Geographical Indication Act 2000 (Act 602) and Geographical Indication Regulation 2001. Registration can be made under the said statute and can be made personally or through an agent by a person who is carrying on an activity as a producer in the geographical area specified in the application with respect to the goods specified in the application and includes a group or groups of such person or a competent authority or a trade organization or association (Geographical Indications Act 2000).

### **3. Challenges**

Insufficient information on the relevance of IP in day-to-day business, high costs associated with obtaining and enforcing IP rights, perceptions that the IP system is esoteric, too cumbersome and time-consuming (Gee, 2007). These are among the reasons why many SMEs are sometimes slow to protect their IP assets. Given the importance of SMEs to the economies of all nations - they constitute some 90 percent of all enterprises worldwide and account for more than 70 percent of the production of goods and services - effective use by SMEs of IP assets is a key factor in ongoing economic development.

SMEs face a number of difficulties in using the IP system (WIPO Magazine, 2005). This is often the result of their limited knowledge of the ins and outs of the IP system, lack of clarity about its relevance to their business strategy and competitiveness, and of their finding the system too complex and expensive to use. Available studies on the use of the IP system by SMEs are largely limited to the use of patents.

Apart from lack of awareness and knowledge on IP, the costs of registering IP are generally perceived as one of the greatest barriers for SMEs (Sajilan, 2008). In budgeting the costs relating to the acquisition of IP rights, entrepreneurs need to take into consideration not only the official fees (including application fees, publication fees and maintenance fees) but also the costs relating to application preparation and prosecution, legal advice and translation costs whenever the applicant intends to apply for protection abroad.

The costs of getting IP protection may be perceived by many SMEs as exceeding the potential benefits to be obtained from protection, particularly considering that a significant part of the costs may be incurred before the product has reached the market and that lenders, investors or government programs rarely provide financial support for the protection of IP rights (Idris, 2003).

Aside from the costs, there are a number of additional elements of the application process that may act as a disincentive for SMEs to seek IP protection, including the time required to be granted a patent or to obtain a trademark registration. The increasing number of applications has often led to an increase in the backlog and therefore an increase in the time required from filing to grant of a patent or registration of a trademark. For SMEs, a long delay for obtaining a patent leaves a great degree of uncertainty and delays the possibility of finding potential licensees or partners for exploiting an invention (WIPO Magazine, 2005).

The barriers to a wider and more effective use of the IP system by SMEs are, therefore, many. To conclude, the first challenge would be low awareness of the system limits the exposure SMEs have to the IP system and their ability to use all the elements offered by the IP system effectively, including not just patents but also utility models, trademarks, industrial designs, trade secrets, patent databases, copyright and other IP rights (Saleh, 2008). Poor IP management skills within SMEs reduce their ability to fully benefit from the system and, therefore, discourage its future use.

Secondly, limited access to the necessary human resources and/or accessible legal advice make use of the IP system complicated and decreases the chances of success in the application process for registration/grant of IP rights. Efficient IP management requires an array of skills ranging from the legal to the scientific/technical and the commercial that not all SMEs have in-house. In fact, such expertise is generally lacking in many if not most SME support institutions; this is equally true of SME consultants and business advisors in the private sector. Thirdly, high costs, not just for acquiring and maintaining but also for monitoring and enforcing IP rights are an additional barrier, particularly for firms that are operating in a number of geographically dispersed markets.

Another major challenges face by entrepreneurs is combating counterfeit goods and piracy issues. Counterfeiting and piracy harms commerce and the public well being, and undermines confidence in the quality of brand name products, resulting in billions of dollars of lost revenue, investment, future sales, and growth opportunities. It also harms legitimate businesses and workers who play pivotal roles in creating, manufacturing, distributing, and selling genuine products. In addition, because infringing products are often substandard in quality, they can harm consumers in a myriad of ways, by for example posing serious health and safety risks (Gee, 2007).

#### **4. Moving Forward**

There are many things to be done to overcome the challenges among the entrepreneurs or SMEs. Governments are responsible for establishing an environment conducive to the development of SME competitiveness. Governments generate policy that impacts the trading environment. They also play a critical role in promoting conformity with global market requirements by building their capacity to supervise the implementation of international quality standards. Finally, governments are instrumental in facilitating access to markets (Sajilan, 2008).

It is increasingly clear that government institutions, in order to be successful in their activities for promoting a wider and more effective use of the IP system by SMEs must seek to target not just the entrepreneurs themselves but also their business advisers, whether they be private sector consultants, or employees of chambers of commerce and industry or investors and employees of financial institutions who are more likely to be listened to by the entrepreneur and managers or owners of SMEs.

In addition, promotion activities on IP have generally proved to be more effective when included in other activities seeking to meet some of the most immediate needs of SMEs, such as marketing, new product development, exporting, financing, etc (Saleh, 2008). In other words, for IP to be included in the business strategy of enterprises it must also be integrated into the overall framework of business support services of those seeking to promote it.

For example, Australia has taken an active role in raising awareness and educating entrepreneurs or SMEs about the importance of IP system (Gee, 2007). Australian government established a marketing department in order to conduct training and promotion activities which aimed at the public as well as SMEs. Among the activities conducted are strong focus on training and providing support to business advisors, regular seminars on various aspects of IP for SMEs and developing IP Toolbox, a reference book for a wide range of organizations in conjunction with the industry.

Government may also facilitate the entrepreneurs in accessing information on IP. Obtaining information about laws, taxation, customs regulations, business advisory services, training opportunities, and financing sources can be exceedingly expensive and time-consuming (Hung, 2007). As a result, SMEs often lack the resources to access this information. Governments play a valuable role in the integration of SMEs into the international supply chain by creating small business administrations that have the responsibility of assisting SMEs; business associations can be encouraged to accept some of this responsibility (Saleh, 2008).

The ambitious goal of assisting new and existing SMEs to become and remain competitive, through a more effective use of the IP system, can only be really attained if all the relevant actors in the public, private and civil society sectors make sustained efforts to bridge the gap in awareness of, access to, and use of the IP system by inventors, researchers, entrepreneurs and SMEs.

This has begun to happen in some countries, but efforts are generally still scattered. For example, in the Republic of Korea, close cooperation between the Korean Intellectual Property Office (KIPO), the chambers of commerce, the government SME support agency, the Korean Patent Attorneys Association and other public and private partners, including financial institutions, business training centers and multinationals have established a network of support for SMEs in IP matters (Gee, 2007). The smart partnerships were based on few strategic objectives such as IP acquisition campaign for SMEs, assisting the creation of IP, reducing the cost of acquiring IPs, activating the market of IP and supportive measures for commercialization.

Singapore recognizes the importance to its economy of intellectual property, both as a national resource and in attracting foreign investment. In order to develop intellectual property as a strategic and competitive asset, Singapore adopts an essentially pro-active IP rights policy for the development of high value-added and creative-content industries. In 2000, the Intellectual Property Office of Singapore (IPOS) was converted into a semi-autonomous statutory board charged, *inter alia*, with administering the IP system in Singapore (Idris, 2003).

On the IPR enforcement front, the agency primarily responsible for domestic enforcement is the Intellectual Property Rights Branch, a specialized Crime Division of the Criminal Investigation Department, while border enforcement is undertaken by the Customs and Excise Department. In the field of education, Singapore has public education campaigns led by IPOS and the National Science & Technology Board aimed at promoting greater public awareness of IP rights. Today, Singapore is one of the leading nations in terms of patent filings and the creation of other IP assets.

To overcome the issue on counterfeit goods and pirated goods, protecting supply chains requires close public-private sector collaboration. Both must work in concert to identify infringing goods and prevent them from entering the market place and international channels of commerce. In this interplay, SMEs should actively endeavour to ensure the security of their production and distribution chains. Indeed, close cooperation between the public and private sectors is essential for effectively securing supply chains and protecting consumers and right holders.

To prevent IPR infringing goods from entering the early stages of the supply chain, suppliers, manufacturers, and other business entities should actively consider ways to protect themselves from IPR infringement, including to make best efforts to ensure that procedures are in place to determine the authenticity of the raw materials and component parts of their products (Hung, 2007).

Once goods are manufactured or assembled, it is necessary for all business entities in the supply chain to actively consider ways to protect themselves from IPR infringement including taking adequate measures to identify and verify the authenticity of goods entering the market. These measures are to ensure the authenticity of products purchased in various distribution channels. Purchasers (such as retailers, distributors, and wholesalers) must to guarantee the authenticity and legality of products acquired from distributors.



Purchasers should refrain from undertaking transactions when the price or terms of sale of the goods are inordinately low or "too good to be true," which strongly suggests the goods are not genuine. Distributors and right holders should cooperate with each other to have procedures and practices in place to verify the legitimacy or reputation of their customers (usually retailers) so as to ensure that IPR infringing goods are not mixed in with genuine goods at the point of sale (Hung, 2007).

It is also important to make the public aware that the manufacture and the trafficking of counterfeit and pirated products, including the importation and exportation of such products, is illegal and may result in severe civil and/or criminal penalties (WIPO Magazine, 2005).

## 5. Conclusion

There is a need to strengthen interaction between IP offices, SME support institutions, business associations, national, regional and local governments and other relevant institutions with a view to better identifying the IP needs of entrepreneurs and SMEs and the barriers to a more effective use of the IP system by entrepreneurs and SMEs. In addition, government and policy makers may promote a more effective use of the IP system by entrepreneurs and SMEs by enhancing awareness and knowledge of all elements of the IP system, including not just patents but also trademarks, geographical indications, industrial designs, utility models, trade secrets, copyright and related rights, new varieties of plants, non-original databases and relevant aspects of unfair competition law, among entrepreneurs and business advisers within public and private SME support institutions (N.P. Louwaars, 2005).

The other relevant areas of policy-making that could be of use are support initiatives that seek to facilitate the application process and reduce transaction costs for entrepreneurs and SMEs for using the IP system and study the impact of the introduction of procedures for accelerated grant of IP rights and of lower or discounted application fees entrepreneurs or SMEs in general (WIPO Magazine, 2005).

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